IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1514 of 2000

with

CIVIL APPLICATION NO. 7281 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD.

Versus

HEIRS OF DECD.BADRUDIN KARMALIBHAI RAMANI

Appearance:

MR SANDIP C SHAH for Petitioner

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 24/08/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The appellant-original opponent No. 2 has questioned the legality and validity of the judgement and award of Rs. 1,40,823/- awarded by the Commissioner for Workmen's Compensation under the Workmen's Compensation Act, 1923 (hereinafter referred to as `the Act') in exercise of powers under Sections 30(1) of the Act in Workmen Compensation Case No. 11 of 1999 in favour of the respondents who are legal heirs and representatives of deceased workman Badrudin Karmalibhai Ramani and against respondent No. 2 employer - original opponent No. 1 and the appellant Insurance Company - original opponent No. 2, by invoking aids of the provisions of Section 30 of the Act.

2. The learned advocate for the appellant insurer has raised before us the following contentions.

(i) that the death of workman could have a nexus with employment injury is not proved.

(ii) that the excessive work taken by the employer cannot constitute a ground for holding insurer liable.

(iii) that the insurer is not liable to pay interest on account of inaction on the part of the employer.

(iv) that the Commissioner of Workmen is not empowered to award an amount of interest on delayed payment by the employer for which the insurer is not liable for payment of the amount of penalty.

(iv) that in the alternative the disease on account of which workman could not be said to be a occupational disease.

3. With a view to appreciate the merits of the aforesaid contentions raised on behalf of the appellant at the admission stage, a few skeleton projection of facts necessary may be highlighted at this stage.

4. Deceased Badruddin K. Ramani died on account of heart failure which was the outcome of the excessive work and employment stress and strain. The deceased was working as a workman of original opponent No. 1 employer, Bharat Cement Producers, at the relevant time. Essentially, he was in-charge of cement pipe machinery operation and he was also engaged in mixing material for preparation of the product of cement. The deceased was a

workman and original opponent No. 1 was the employer.

5. The deceased was 49 years old at the relevant time and he was working as a workman in the factory of opponent No. 1. He was working overtime. Excessive work was being taken from him by the employer. Obviously, it means he was a hard worker. He succumbed to cardiac arrest at about 9.00 a.m. on 3.7.1999 and it is proved, without any doubt, that apart from continuous overtime, excessive work on previous day i.e. on 2.7.1999, he had started working and he went on continuing labour work for the whole day and continued the same for the night. Until a severe chest pain complaint was made in the early morning around 9.00 a.m. on 3.7.1999, he went on continuously working on account of the fact that because of monsoon season the employer had to supply in time the cement pipes to certain customers and therefore work was being taken on war footing. Evidence of the widow Rasidaben Badruddin Ramani, Dr. Rathod of Bhagsar Govt. Hospital and investigation papers of police relied upon by the heirs of the deceased came to be accepted by the Commissioner for Workmen's Compensation in absence of any evidence led by the opponents. The finding recorded by the Commissioner for Workmen's Compensation and the resultant conclusion that the death was directly attributable to the excessive work taken by the employer and substantial amount of stress and strain coupled with the nature and type of labour work, the deceased was engaged in mixing raw material for preparing cement pipes cannot be said to be in any way unjustified, unreasonable or perverse. We are, fully, satisfied that the conclusion drawn from the set of facts proved on record and recorded by the Commissioner for Workmen's Compensation, is quite justified. Therefore, this will, obviously, eliminate the first contention raised by the learned advocate for the appellant that the proximity and the nexus between death and employment injury has not been established.

6. In so far as the second contention is concerned, it may be noted that the Insurance Company cannot be permitted to raise the plea when the death is shown to be or proved to be direct outcome of the employment injuries that it was not taken by the employer in accordance with Labour Laws and therefore Insurance Company should be held not liable for the payment of compensation under the Act. Probably, this submission is raised for being rejected at the threshold, since we find it is, totally, meritless.

7. That would, obviously, lead us to the

consideration of the third submission that the insurer is not liable for the payment of interest as it had occasioned on account of inadvertence or inaction on the part of the employer in not depositing the amount within the statutory period before the Commissioner of Workmen's Compensation. Nothing has been, successfully, pointed either from the lower decided cases as to when the factum of insurance is not in dispute, the insurer could be held not liable for the payment of an amount of interest to be paid as per the direction of the Tribunal on account of delay in depositing the amount before the Commissioner of Workmen's Compensation under the statutory liability. This contention is, therefore, required to be rejected. Accordingly, it is rejected.

8. The fourth contention is in relation of liability for the payment of penalty. It was submitted that the portion of the judgement and award indicates that show cause notice has been ordered to be issued against the employer as well as the insurer in connection with penalty. We may make it, very, clear that the submission raised by the learned advocate Mr. Shah that the penalty is not to be imposed on the insurer for inaction or indifferences on the part of the employer and directed to be paid pursuant to the provisions of Section 4-A of the Act. The legal proposition advanced by the learned advocate Mr. Shah is quite justified and acceptable. None the less, factually, this submission cannot be sustained for the simple reason that in the penultimate para of the award the learned Commissioner for Workmen's Compensation has in clear terms, observed and directed that the show cause notice shall be issued to determine the quantum of penalty and the resultant liability, only, in so far as the original opponent No. 1- respondent No. 2 Bharat Cement Producers in this appeal is concerned. It appears that, either, through inadvertent or typographical mistake, the final order contains number of opponent No. 2 appellant before us. It is in this context, probably, the fourth contention came to be advanced before us. Factually and legally, on both counts we make it clear that there is no order of issuance of show cause notice in so far as liability for the payment of penalty under Section 4-A of the Act is concerned and otherwise, also, the legal position is very well expounded and settled by now that for a penalty under Section 4-A of the Act the insurer cannot be held liable. Therefore, this point, also, at this stage, would not tender us any further which would require admission of this appeal.

9. Again it may be noted that the contention raised on

behalf of the appellant is with regard to the liability of the insurer on the premise that the deceased died due to heart attack resulting on account of stress and strain and excessive work cannot be said to be occupational disease in Schedule III Part- C under Section 3 of the Act. This contention is raised for the first time at the stage of oral submissions when the matter was heard at the admission stage which is absent in the written statement Exh. 34. Obviously, there was no question of raising of the dispute before the Commissioner for Workmen's Compensation. Again, it could not be said to be a pure question of law which could be permitted to be raised at this stage. It is not pleaded in the written statement and even not, remotely, mentioned in the memorandum of appeal. This contention is, therefore, required to be rejected. It may be noted at this stage that the jurisdictional ambit at the parameters of an appeal against the order or award of the Commissioner of Workmen's Compensation under the Act has been very much circumscribed and narrowed down by the Legislature by incorporating provisos to Section 30 in the Act. Section 30 provides as to when appeal shall lie to the High Court from the orders mentioned in Section 30(1) (a) to (e) followed by a proviso which is important. The first proviso provides `that no appeal shall lie against any order unless a a substantial question of law is involved in the appeal (emphasis supplied). In our opinion, there is no any pure question of law raised before us much less a substantial question of law. The Parliament in its wisdom has devised this proviso bearing in mind the benevolent provisions of the Act and there is a purpose and policy behind incorporating statutory provisions in Section 30(1) of the Act - proviso (1).

NEXUS:

10. Incidentally, it may be stated that it is settled proposition of law that if the death is the outcome of stress and strain, excessiveness in work taken by the employer from the workman or by forced circumstances or otherwise, the workman has to go for work such stress and strain, it is nothing but a death which is directly attributable to the employment injuries. In this connection, we would like to highlight a decision of this court in the case of DEVIBEHN DUDHABHAI WD./O. DUDHA RAJA VS. MANAGER, LIBERTY TALKIES reported in 1994(1) G.L.H. 247 which was delivered by one of us (J.N. Bhatt, J). In that case workman had died on duty due to heart attack which was the result of employment, stress and strain, job and nature of work as it is in the present case. In the said case, also, a contention was

advanced that occurrence of a death of workman could not be characterised as employment injury which was negatived holding that it is shown that there is a direct and casual nexus between the result of death like that an injury and the employment of the workman. It is, clearly, propounded in the said decision analysing the provisions of Section 3 of the Act and holding that when the personal injury sustained by the deceased is by accident arising out of and in course of the employment, may be a heart attack, and if it is, successfully, proved or shown from the record that there is a direct nexus between such injury and the employment, the employer is liable for the payment of compensation and resultant liability would be that of insurer.

11. The expression "accident" employed in Section 3 of the Act was considered. Conjoint effect of provisions of Sections 3 and 4 came to be examined in the phrase "personal injury by accident arising out of employment" prescribed in Section 3 would go to show that personal injury not by design but by accident, by some mishap unexpected and unforeseen, accidental personal injury. The expression "accident" includes any unforeseen personal injury resulting to the workman in the course of his employment from any unlooked for mishap or occurrence. Reliance was placed by this court in that decision on a decision of Bombay High Court in the case of BAI DIVA KALUJI VS. SILVER COTTON MILLS LTD. reported in AIR 1956 Bombay 424 and also another decision of this court in the case of SHANTABEHN THAKORE VS. NEW RAIPUR MILLS COMPANY LIMITED reported in AIR 1968 (Guj) 113. In the present case, it is noted from the factual scenario emerging from the record that the workman has died on account of stress, strain and extensiveness of work in course of employment arising out of the employment. Not only that he sustained such injuries during the course of his employment but he had suffered such a heart attack in the premises of the factory as on the previous night he had worked for the whole day. He had also started working in the morning. He started work in the factory in the morning on 2.7.1999 and he succumbed to the same in the morning around 9.00 a.m. on 3.7.1999 in the factory premises from where he was shifted to Bhagsar Hospital where he was treated by Dr. Rathod. We have, therefore, no hesitation in finding that the ultimate conclusion recorded by the learned Commissioner for Workmen's Compensation is justified on this count, also, when the workmen compensation can be awarded, statutorily, provided in Section 3. The section deals with imposition of amount of interest on the delayed payment and section 4-A of the Act deals with the

compensation to be paid when due and penalty for default can be imposed.

13. The contention of the learned advocate for the petitioner cannot be accepted in view of the judgement in the case of MARIAM BEE VS. TOWN AND COUNTRY DEVELOPMENT AUTHORITY reported in I (1984) Accident & Compensation Cases P. 227 (MP). The facts of the case were that the workman while moving from one place of work to another under directions from the employer, complained of pain in his chest and ultimately, died. The medical opinion was that he had died of heart attach which could have been caused, inter alia, due to tension. There was evidence to show that though his wife had already been admitted in the hospital, the workman was denied leave and that he had been warned that if he wanted leave, his services would be terminated. Under these circumstances the workman had gone to work where he had to move between the two places of work. In view of the said evidence, the court (Coram: G.L. Oza, J as he then was) held in paragraph 24 at page 235 as follows:-

> "In this view of the matter, therefore, from the evidence which has been discussed earlier about the physical stress and mental strain that the deceased had at the time when he suffered the heart attack, ultimately resulting in his death, it oculd not be said that the death was not as a result of his employment."

14. In another judgement in the case of JAYARAM MOTOR SERVICE VS. PITCHANUMAL (1982) 2 LLJ 149 (Mad) it is observed that where a night watchman, worked throughout the night barring a small interval and one and half hours after finishing his duty suddenly collapsed and died, it was held that his heart failure must have occurred only as a result of strain which he had undergone by keeping awake during the entire night in the course of his duty. In para 14 Madras High Court has observed as under:-

> "The interval from the cessation of duty and the death being 1 1/2 hours it cannot be said that the stress and strain undergone by the deceased workman during the previous had no relation to his death. Hence I have no hesistation to coming to the conclusion that though the death occurred 1 1/2 hours after he ceased to do work it can only be said that the stress and strain sustained by him during the course of his work had contributed to his death."

15. By way of abundant caution, it is further clarified while concluding this judgement that in so far as the payment of penalty under Section 4-A of the Act is concerned, the appellant original opponent No. 2, in the light of the settled proposition of law, cannot be held liable. The amount of penalty will be dealt with by the Tribunal in accordance with law.

16. After having taken into consideration the submissions raised before us and after having analysed, critically, in the celebrated legal set up, we find the appeal on hand meritless requiring the, only, fate of dismissal and accordingly, it is dismissed with no order as to costs.

17. In view of the orders passed in the main matter, no orders are passed in the Civil Application.

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